

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

ELIZABETH SINES, et al.,

No. 3:17-cv-72

Plaintiffs,

Charlottesville, Virginia

vs.

March 16, 2018

2:03 p.m.

JASON KESSLER, et al.,

Defendants.

TRANSCRIPT OF TELEPHONIC CONFERENCE CALL
BEFORE THE HONORABLE JOEL C. HOPPE
UNITED STATES MAGISTRATE JUDGE.

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9 (Call to Order of the Court at 2:03 p.m.)

10 THE COURT: Hi. This is Joel Hoppe.

11 Thank you-all for calling in for the scheduling
12 conference in *Sines versus Kessler*.

13 Now, this matter is on the record. And I imagine
14 we have a number of parties and attorneys for the parties
15 who have called in, but there may also be some third
16 parties who have called in as well, as this is a public
17 matter.

18 Now, first off, I would like to find out who is
19 on the line for the plaintiffs.

20 MR. ROTTENBORN: Good afternoon, Your Honor.
21 This is Ben Rottenborn, from WoodsRogers.

22 On the line with me this afternoon is Roberta
23 Kaplan, from Kaplan & Company; Karen Dunn and Philip
24 Bowman, from Boies Schiller; and Alan Levine and David
25 Mills, from Cooley.

1 THE COURT: All right. And, Mr. Rottenborn, who
2 is going to be speaking on behalf of the plaintiffs?

3 MR. ROTTENBORN: I will let my co-counsel answer
4 who is going to take the lead on most of those. It won't
5 be me this afternoon.

6 MS. KAPLAN: Your Honor, this is Roberta Kaplan.
7 I think I will be addressing most of the issues, although
8 it is certainly possible that either Ms. Dunn or
9 Mr. Levine could chime in on certain matters.

10 THE COURT: Okay. And this -- what I'm going to
11 ask will go for everybody, but because this is being
12 recorded and to make an accurate record, I would ask that
13 you state your name or identify yourself before you
14 -- before you speak. And I'll try and remember to remind
15 you when you forget.

16 MR. ROTTENBORN: Will do. Thank you, Your Honor.

17 THE COURT: All right.

18 Now, for the defendants, Mr. Woodard, is that
19 you.

20 MR. WOODARD: Hi, Judge. How are you?

21 THE COURT: All right. Good afternoon. And you
22 are representing a number of the defendants in this case.
23 And do you have anybody else with you?

24 MR. WOODARD: Yes, sir. Mr. Kolenich -- Albert
25 Woodard. Mr. Kolenich should be somewhere on the phone.

1 Is he --

2 MR. KOLENICH: Yes. This is Mr. Kolenich. I'm
3 here.

4 MR. WOODARD: There we are. He'll be carrying
5 the ball for us, Judge.

6 THE COURT: All right.

7 And, Mr. Spencer, are you on the line?

8 MR. SPENCER: Yes, I am. Good afternoon, Your
9 Honor.

10 THE COURT: All right. Good afternoon.

11 And how about for Mr. Fields?

12 MR. CAMPBELL: Good afternoon, Your Honor. This
13 is David Campbell on behalf of Mr. Fields.

14 THE COURT: Let's see. How about for -- well,
15 Mr. Jones, are you on the phone?

16 MR. JONES: Yes, I am.

17 THE COURT: All right. You also represent a
18 number of defendants in this case.

19 MR. JONES: That's correct.

20 THE COURT: All right. Are there any other
21 parties or attorneys for a party on the phone.

22 MR. PEINOVICH: Yes, Your Honor, this is Michael
23 Peinovich, pro se, here.

24 THE COURT: Okay. Mr. Peinovich -- sorry --

25 MR. PEINOVICH: No problem.

1 THE COURT: -- is here.

2 Anyone else?

3 (No response.)

4 THE COURT: All right. Well, where I would like
5 to start is by addressing the case schedule. Now, there
6 are a number of motions that are related to the case
7 schedule. And I -- I have read the filings in those. It
8 is the motion to prevent Mr. Peinovich from recording the
9 26(f) conference with plaintiffs' counsel, there are two
10 motions to stay discovery, and then there's also a
11 recently filed motion to show cause that was filed by the
12 plaintiffs that relates to some concerns about spoliation
13 of evidence.

14 Now, I do want to address a little later on the
15 recording and then the stays of discovery. And as for the
16 concerns about the spoliation, I would like to hear what
17 counsel's thoughts are as far as the ESI protocol and any
18 document preservation order and any other interim steps
19 that might be necessary to make sure that evidence is
20 preserved for use in the case. But I don't intend to get
21 into that show cause motion beyond those issues, because
22 it really was just filed. And I think that a lot of the
23 other issues would just need to be briefed and then allow
24 time to fully address those.

25 Now, as to -- as to the case schedule, there is

1 essentially one 26(f) report that has been submitted and
2 there are a number of proposed changes to the schedule.

3 Ms. Kaplan, do you want to update me on any
4 scheduling discussions that you have had with the
5 defendants or any other suggestions as to the deadlines?

6 MS. KAPLAN: Your Honor, we -- you know, we have
7 an agreement with the defendants as to how far away from
8 the trial date certain things should happen in the case.
9 I think we have reached agreement on those issues. So
10 everything really comes down to the trial date.

11 We were thinking earlier today that perhaps we
12 could wait until May to set the trial date, in large part
13 because we have kind of gotten such a slow start in terms
14 of document production. But if Your Honor wants to set a
15 trial date today, we're obviously amenable to that as
16 well.

17 THE COURT: How long do you think the trial would
18 be in this case? Just give me an estimate.

19 MS. KAPLAN: I think two weeks, maybe three, Your
20 Honor.

21 THE COURT: All right. And, Mr. Kolenich, do you
22 think it would be two to three weeks as well? Or
23 Mr. Woodard?

24 (Pause.)

25 MR. WOODARD: I would advert that it -- I think

1 it is going to be longer, Judge. That's my crystal ball
2 at work right now, obviously.

3 THE COURT: Well, perhaps -- let me ask you this,
4 Ms. Kaplan: Have initial disclosures been made by all of
5 the parties at this point?

6 MS. KAPLAN: All but defendant Spencer and the
7 parties that haven't appeared in the case yet, Your Honor.

8 THE COURT: And as to the parties who haven't
9 appeared in the case, is there anyone who default has not
10 been entered? I know the -- the --

11 MS. KAPLAN: Yes, Your Honor --

12 THE COURT: Go ahead.

13 MS. KAPLAN: Yes, Your Honor. I believe that as
14 to the non-appearing defendants, I believe they are all
15 covered by the default judgment.

16 THE COURT: All right. So it just remains with
17 Mr. Spencer to make the initial disclosures.

18 MR. SPENCER: I will -- Your Honor, this is
19 Richard Spencer.

20 I will be sending a motion, a joinder to Mike
21 Peinovich's motion to stay discovery.

22 MR. PEINOVICH: Richard, this is not about that.
23 This is about the initial disclosure under the Rule 26,
24 which is where you indicate, like, the kind of thing that
25 you intend to bring forward as evidence should this -- in

1 the unlikely event this goes to trial. So -- yeah, you
2 should -- you have to do that. But, you know, we can discuss
3 it.

4 THE COURT: All right. Why don't we -- why don't
5 you-all save that conversation for after this conference
6 call.

7 But, Mr. Spencer, I understand that you want to
8 join the motion to stay.

9 Ms. Kaplan, I know you, in your 26(f) report
10 concerning Mr. Spencer, had indicated that you would want
11 those disclosures to be made, I guess, to and from
12 Mr. Spencer within 14 days. And I think that's a -- you
13 know, a reasonable period. And so what I will do is after
14 this conference call I will enter an order that will set
15 the deadline for making the initial disclosures as 14 days
16 from the entry of the order.

17 MS. KAPLAN: That's fine, Your Honor. Thank you.

18 THE COURT: All right. Now, as far as the -- I
19 think -- if it -- since you-all already have the initial
20 disclosures for the most part, I guess that's not the -- I
21 guess there's the difficulty in figuring out what the
22 scope of the case is or how long it might take to try, but
23 you would want to wait until after the motion to dismiss
24 hearing to, you know, see what the posture of the case is
25 before setting a trial date, Ms. Kaplan, but --

1 MS. KAPLAN: Your Honor, it is not so much what
2 the Court decides on the motion to dismiss. We're pretty
3 confident about that. The problem that we have is to date
4 we have not received any written responses to our requests
5 for documents or our interrogatories from any of the
6 defendants. They are all very overdue. And none of the
7 defendants have produced a single document to us. So it
8 is very hard -- and we need certain things to get even
9 third-party documents -- consents from certain defendants
10 to get things from some of the third-party technology
11 sources.

12 So without having a better sense of when that
13 will happen and when we get some cooperation in that
14 regard, it is very hard to figure out kind of how long it
15 will take us to complete discovery.

16 THE COURT: All right.

17 All right. And, Mr. Woodard, would you suggest
18 holding off until that hearing on the motion to dismiss
19 before setting a trial date?

20 MR. WOODARD: Absolutely.

21 THE COURT: All right. Mr. Campbell?

22 MR. CAMPBELL: Yes, I would, Your Honor.

23 THE COURT: All right. Mr. Jones?

24 MR. JONES: Yes, Your Honor, I would too.

25 THE COURT: All right. Mr. Spencer?

1 MR. SPENCER: Yes, Your Honor.

2 THE COURT: All right. And Mr. Peinovich?

3 MR. PEINOVICH: Yes, Your Honor. I completely
4 agree.

5 THE COURT: All right. Well, then I'll concur in
6 that. And we will postpone setting a trial date until
7 -- until that hearing. And, you know, it may be that we
8 can use that date, following the hearing, as a time to
9 check in on the status of discovery and see where things
10 stand at that point, how the production of discovery is
11 going as well.

12 MS. KAPLAN: Yes, Your Honor. Well, obviously, I
13 assume this is already -- you have this in mind, but once
14 we discuss the motions for stay, and assuming there will
15 be no stay of discovery, it would, obviously, be very
16 helpful to have orders with hard dates for the defendants
17 to have to respond to our discovery requests, because at
18 this point, again, they are all overdue from when they
19 were supposed to have been submitted.

20 THE COURT: All right.

21 MR. PEINOVICH: May I say something here?

22 THE COURT: If you can remember to identify
23 yourself.

24 MR. PEINOVICH: Yes. This is Michael Peinovich.
25 I would just like to say, in response to what

1 Ms. Kaplan said, that I consider my motion to stay
2 discovery to be a response to their initial discovery
3 request. And I don't think I -- I think until that matter
4 is settled, I'm not actually overdue on anything. That's
5 my opinion.

6 THE COURT: I don't know about that.

7 MR. PEINOVICH: Okay.

8 THE COURT: All right.

9 MR. PEINOVICH: Obviously, (inaudible) Your Honor
10 if I'm mistaken in that, but --

11 THE COURT: All right.

12 And, Mr. Spencer, I know you hadn't joined in the
13 -- or haven't had a discussion about the 26(f) deadlines,
14 but have you seen the proposed deadlines that plaintiffs
15 counsel and then the rest of the defense counsel and
16 defendants have agreed to?

17 MR. SPENCER: Yes. I have seen those deadlines.

18 THE COURT: All right. Do you have any problems
19 with those deadlines?

20 MR. SPENCER: No.

21 THE COURT: All right. Well, that will be the
22 -- you know, the rough breakdown of the deadlines in the
23 case as far as discovery cutoff and expert reports and
24 things of that nature.

25 Now, Ms. Kaplan, have you-all had any further

1 discussions about the scope of discovery and whether there
2 would be any limits put on it? I'm not talking about the
3 stay of discovery, but as far as, you know, the number of
4 interrogatories and things like that?

5 MS. KAPLAN: Yes. Your Honor, I'm glad you asked
6 that. I don't know that we have had any discussions about
7 interrogatory limits, but with respect to depositions,
8 obviously, we believe there needs to be a change to the
9 ordinary course, since there are 25 defendants in the
10 case. Only 20 of those are individuals who we need to
11 depose. So we are suggesting 20 party depositions per
12 side and then another 10 nonparty depositions.

13 THE COURT: All right.

14 All right. Mr. Woodard or Mr. Kolenich?

15 MR. WOODARD: Do you want to take this one?

16 MR. KOLENICH: Yeah, I have got it.

17 Mr. Kolenich, Your Honor.

18 We are not necessarily not in agreement with
19 that. We would just like to consider it. Ten nonparty
20 depositions might not be enough, given the huge number of
21 witnesses that are in the process of being identified in
22 this case. But, I mean, certainly some limit is
23 appropriate. I just don't know that 10 nonparty witnesses
24 is something we can agree to right now.

25 THE COURT: All right. Well, that sounds like

1 that is probably something that you-all need to discuss
2 further. And I think if there are any issues or
3 disagreements about those numbers, you can -- you can
4 bring them to my attention, and I'll resolve them.

5 MS. KAPLAN: Thank you, Your Honor. From
6 Ms. Kaplan. We will do that.

7 THE COURT: And, of course, Mr. Jones and
8 Peinovich and Spencer and Mr. Campbell, you-all would need
9 to be involved in those discussions as well.

10 UNIDENTIFIED VOICE: Yes, Your Honor.

11 UNIDENTIFIED VOICE: Yes, Your Honor.

12 UNIDENTIFIED VOICE: Thank you.

13 UNIDENTIFIED VOICE: I agree with Mr. Kolenich's
14 interpretation here. I think there is a potentially large
15 amount of people that could be deposed here. But, you
16 know, obviously there would have to be a reasonable limit.

17 THE COURT: All right.

18 MR. WOODARD: Elmer Woodard. How many plaintiffs
19 are there?

20 MS. KAPLAN: 10, I believe.

21 MR. WOODARD: Say again, please?

22 MS. KAPLAN: I apologize. For Ms. Kaplan. I
23 believe the number is 10.

24 MR. WOODARD: Okay.

25 THE COURT: All right.

1 MR. CAMPBELL: Your Honor, if I could, briefly.
2 This is David Campbell. I would think that, obviously, we
3 would only need 10 party witness depositions then, but I
4 would think that we would need significantly more than,
5 say, 20 nonparty, even as regards to the medical
6 allegations. You know, for each plaintiff -- if they are
7 all together like this, each plaintiff would presumably
8 have at least one physician. And that's not counting fact
9 witnesses. So I would just carve out -- say, you know,
10 that we would need to carve out an expert versus fact
11 witness area as well.

12 MS. KAPLAN: Well, Ms. Kaplan, Your Honor --

13 MR. WOODARD: Yeah, this is Elmer Woodard. It
14 seems like the one thing everybody can agree on, there are
15 going to be a whole bunch of nonparty depositions. So why
16 don't we just solve the problem and say 50? And if we
17 need more, then we can always come back and ask. But, for
18 God's sake, let us hope we don't need more than 50. That
19 would cover it. And we can dispose of that issue right
20 now.

21 MS. KAPLAN: For Ms. Kaplan, Your Honor. I don't
22 think the plaintiffs would agree to that high of a number.
23 We are anxious to get to trial. We think that would delay
24 discovery for far too long.

25 UNIDENTIFIED VOICE: I have a number of

1 (inaudible).

2 THE COURT: I think what you-all need to do is to
3 allow discovery to proceed a little bit further and start
4 really trying to identify who the witnesses -- nonparty
5 witnesses may be in the case. And then I think that will
6 inform your decision more.

7 And, you know, if it seems like it is getting to
8 be too many folks, then I would encourage you to consider
9 whether you need all of those people. And then if you do
10 need to involve me in reaching an agreement -- or reaching
11 a number that is workable, you can do that.

12 MS. KAPLAN: For Ms. Kaplan, Your Honor, that
13 seems like a very reasonable way to proceed. We agree.

14 THE COURT: Okay.

15 Now, this does tie in -- my next question, this
16 does tie in somewhat with the motion to stay, in
17 particular for Mr. Fields, because I know the 26(f) report
18 there is -- there's a request by the defendants that any
19 defendant who has a pending criminal charge, that that
20 person's deposition would be put off until after the
21 criminal charges are resolved.

22 Who -- who is affected by that concern, other
23 than Mr. Fields at this point?

24 MR. WOODARD: This is Elmer Woodard.
25 Mr. Cantwell is affected by that. And we agree with

1 Mr. Campbell.

2 THE COURT: Anyone else?

3 (No response.)

4 THE COURT: All right. Mr. Cantwell --

5 MR. PEINOVICH: May I ask a question, Your Honor?
6 This is Michael Peinovich.

7 THE COURT: Sure.

8 MR. PEINOVICH: What about potential people that
9 I would like to depose that are not parties to this suit
10 that are facing charges? Like there are a number of
11 counterprotesters that I would like to depose. But I
12 don't know -- I would have to research if they are facing
13 charges or not. So how would that be affected here?

14 THE COURT: Well, if it is not a party, then it
15 is -- if the person is not a party and they are facing
16 charges, then that's not something that I'm going to
17 factor into the -- into any scheduling decisions.

18 MR. PEINOVICH: Okay. All right. Thank you very
19 much.

20 THE COURT: And, Mr. Campbell, and perhaps
21 Mr. Woodard or Mr. Kolenich, just to delve in a little bit
22 to the motion to stay, what other -- what concerns other
23 than your clients' depositions are fueling the motion to
24 stay? Are there other areas of discovery that you think
25 could be problematic?

1 MR. WOODARD: This is Elmer Woodard.

2 Mr. Peinovich probably ought to carry that ball.

3 MR. CAMPBELL: Judge, if I could --

4 THE COURT: This is Joel Hoppe again.

5 Mr. Peinovich wasn't raising that, that concern
6 about the criminal consequences of responding to
7 discovery.

8 So, Mr. Campbell, go ahead.

9 MR. CAMPBELL: Yes, sir. Thank you, Your Honor.

10 Your Honor, in addition to the depositions, I
11 think any interrogatory that calls for a description or a
12 statement of the defendants would be problematic as well.
13 And I would certainly, you know, proffer to the Court that
14 staying or severing as to Mr. Fields would be an
15 alternative route, rather than staying the entire case,
16 because I don't know that anyone disagrees that the issues
17 are a little different.

18 Anything that would be describing events -- and
19 there's also a concern, Judge, of -- on my behalf, for my
20 client, which may not be a concern for the Court and with
21 even the plaintiff, as to any -- pleading the Fifth might
22 be interpreted by an insurance carrier as not cooperating
23 under the contract, that might affect coverage. And that
24 may not be anything that the Court or, frankly, the
25 plaintiffs are concerned with, but that would certainly be

1 a concern of mine.

2 THE COURT: All right. Mr. Campbell, are there
3 some categories of discovery that you think wouldn't prove
4 problematic for Mr. Fields? It sounds like there have
5 been some discovery responses from Mr. Fields.

6 MR. CAMPBELL: I would say, Your Honor, that
7 producing documents wouldn't necessarily be problematic.
8 I think any -- you know, in discovery, that expert
9 defenses and that kind of thing wouldn't necessarily be
10 problematic. I think that the concern is all-around Fifth
11 Amendment privileges of Mr. Fields. And actually I
12 shouldn't say that, Your Honor. There could be some
13 overlay of expert discovery that might run afoul of the
14 portion of the brief with concern as to impermissibly
15 aiding prosecution in the criminal case.

16 So I could see -- I could think of a category of
17 expert discovery that might be problematic as well. But
18 in general, it would be statements or descriptions.

19 THE COURT: All right.

20 All right, Mr. Fields --

21 MR. CAMPBELL: Yeah, as far as Cantwell is
22 concerned, yeah, any description of -- it is a little more
23 nettlesome. My impression of the complaint is that it
24 pretty much says Mr. Cantwell allegedly did things on
25 August 12th. And to the extent that it -- that I'm

1 correct, then Mr. Cantwell doesn't particularly have
2 -- there aren't any categories of discovery that he
3 couldn't answer about August 12th. There -- now, as to
4 August 11th, on the other hand, specifically the night
5 thereof, and, in fact, the events of all day, that can get
6 us into some Fifth Amendment problems.

7 And -- so his primary objection is to making any
8 statements about August 11th. I'm not -- I just don't
9 remember the complaint enough to be able to tell you
10 whether or not it alleges he did anything on August 11th
11 that affected the plaintiffs. I don't think it does. But
12 I don't remember it --

13 THE COURT: When is his criminal trial set for?

14 MR. CAMPBELL: August.

15 THE COURT: Okay.

16 MR. CAMPBELL: And so that would be our primary
17 -- our primary concern.

18 THE COURT: All right.

19 MR. CAMPBELL: So that means -- Ms. Kaplan may
20 -- if they are saying he didn't do anything that affected
21 the plaintiffs on August 11th, then we have -- it is not
22 that big a deal, it doesn't seem to me. But if she's
23 saying he did something essentially before August 12th to
24 do that, then, of course, August 11th would be -- any
25 statements about events on August 11th would be

1 problematical.

2 THE COURT: Okay.

3 Ms. Kaplan.

4 MS. KAPLAN: Yes, Your Honor?

5 THE COURT: I think I understand your position
6 from your brief. You essentially proceed ahead with
7 discovery. And any defendants can raise a Fifth Amendment
8 concern when they -- you know, if they see fit and make a
9 particularized objection or statement about that
10 privilege. Is there anything -- anything additional that
11 you would -- that you would add, in particular about the
12 depositions of Mr. Cantwell and Mr. Fields? And it may be
13 that -- just given the schedule of the case, that those
14 would come sufficiently late in the case so that it
15 wouldn't be a problem.

16 MS. KAPLAN: Yes, Your Honor. That's exactly
17 what I was thinking. Certainly they should proceed with
18 producing documents and things of that nature, which is
19 our highest priority right now.

20 In terms of depositions, we are certainly aware
21 of the Fifth Amendment issues. We just heard that
22 Mr. Cantwell's trial is scheduled for August. I believe
23 Mr. Fields' is currently scheduled for November. And we
24 certainly can take that into account in terms of
25 scheduling depositions and try to be as sensitive to that

1 as we possibly can. But right now I don't think it is a
2 ripe issue.

3 THE COURT: All right. Well, what I -- I do
4 intend to address the motions for stay in written orders.
5 And I'll try and do that -- do that shortly. Is there
6 -- is there anything else?

7 Mr. Peinovich, I know you have a motion to stay
8 as well. And I read that and your reply and the
9 plaintiff's response to it. Is there anything else that
10 you would want to say on your motion?

11 MR. PEINOVICH: No. I would reiterate the
12 arguments that would be in those documents that are
13 already filed. I mean, I could do that. But if you
14 understand the arguments, then there's kind of no point in
15 me reiterating them. So, yeah.

16 THE COURT: No need to reiterate what you already
17 wrote.

18 All right. Now, Ms. Kaplan, in the 26(f) report
19 you noted a need to have a robust ESI protocol. And, of
20 course, there's now the motion to show cause for
21 spoliation and just the general concerns about any
22 document preservation.

23 What do you suggest as far as the steps for any
24 ESI protocol or preservation order or other means to make
25 sure that all documents, whether electronic or otherwise,

1 are preserved for discovery purposes?

2 Let's see if there's an agreement on that.

3 MS. KAPLAN: No, I don't think there's an
4 agreement, Your Honor. And we have been -- tried to be
5 involved and we conversed with defendants on several
6 occasions to try to inquire as to what steps, if any, had
7 been taken to preserve electronic information. And so far
8 we haven't really gotten any responses.

9 I think an order from the Court making it clear
10 that, obviously, defendants have to preserve all of their
11 materials and to identify any instances since the filing
12 of the complaint in which documents weren't preserved
13 would be extremely helpful.

14 I'm mindful of what the Court said at the
15 beginning of the conference. I don't want to go into too
16 much detail about spoliation, but we have very, very
17 serious concerns about this, are thinking about maybe a
18 request for an independent examiner to come in and do kind
19 of an audit of their devices to make sure that nothing has
20 been deleted and, if it has, to try to get it restored.

21 MR. PEINOVICH: May I comment, Your Honor? This
22 is Michael Peinovich.

23 THE COURT: Sure. Go ahead, Mr. Peinovich.

24 MR. PEINOVICH: Yeah, I've confirmed to the
25 plaintiffs in an email at least twice, but I think three

1 times, that I have not deleted nor will I delete any
2 information relevant to this case. I'd be happy to swear
3 to that in some way as well. I have confirmed that, as
4 well as said that I am more than happy to discuss
5 discovery disputes with them. They are not -- they don't
6 really want to talk to me.

7 THE COURT: All right. Well --

8 MR. SPENCER: Richard Spencer. I would second
9 that. I have absolutely no intention to delete any
10 electronic record regarding Charlottesville, being that
11 information is exculpatory.

12 THE COURT: All right. Well, and I certainly
13 think that it is incumbent upon everyone to preserve any
14 potentially relevant evidence. And I -- in recognizing
15 some of the concerns that have been raised in this case, I
16 certainly am entering a preservation order. And if
17 there's any ESI protocol, whether it is agreed upon or if
18 there are separate protocols that the parties want to
19 submit, I'm happy to consider those as well. I do take
20 everyone's obligation to preserve this evidence very
21 seriously.

22 MR. PEINOVICH: May I make one more comment
23 -- sorry. Go ahead, Ms. Kaplan.

24 MS. KAPLAN: No, no. Go ahead, Mr. Peinovich. I
25 apologize.

1 MR. PEINOVICH: Yes. I would just like to say
2 that I know there is an issue with another one of the
3 defendants in the order with spoliation. And that's -- I
4 wanted to just emphasize that I am not involved in that in
5 any way. And I don't believe any information relevant to
6 me or evidence that I might have was, you know, destroyed
7 in this case. And I am absolutely preserving everything.
8 I am not -- I am not involved in that issue with one of
9 the other defendants. I just wanted to reiterate that.

10 THE COURT: All right. Thank you, Mr. Peinovich.
11 And I hear you loud and clear on that.

12 And, Mr. Spencer, I sense that you are going to
13 echo that.

14 MR. SPENCER: Yes, I -- yes. This is Richard
15 Spencer. I would echo that. Again, I won't -- I can't
16 say whether -- the things that were said by Matt Parrott
17 recently about destroying information, I don't know
18 whether that is true or not. But, regardless, there is no
19 information regarding me that could be destroyed involving
20 that defendant. The -- Matthew Heimbach and the
21 Traditionalist Workers Party, I have never been a member;
22 I have nothing to do with them; I am not connected with
23 them.

24 So I will -- you know, I'm a very reasonable
25 person. I understand my obligations as a citizen. I

1 would not even consider destroying information relevant to
2 the case.

3 THE COURT: All right. All right. Thank you.

4 Ms. Kaplan?

5 MS. KAPLAN: Yes, Your Honor.

6 THE COURT: Was there something that you were
7 going to say?

8 MS. KAPLAN: Yeah, a couple things. One, I would
9 be happy to submit for the Court -- and we could try to
10 meet and confer -- a proposed order in this respect as
11 well as an ESI protocol.

12 In our document request and interrogatories we
13 have actually asked the defendants to identify what steps
14 have been taken, what devices they have, et cetera. And
15 hopefully when we get answers to that we'll be in a more
16 educated position to respond.

17 There's one other issue, Your Honor, I'm just
18 previewing that is likely to come up, which is in some of
19 the third-party subpoenas we are going to need consent
20 from the defendants, under the Stored Communications Act,
21 in order for an entity, plus this Court, to produce
22 documents to us. And so we may need the Court's
23 assistance in that as well.

24 THE COURT: All right. Mr. Kolenich and
25 Mr. Woodard, you know, the concern has been raised about

1 the spoliation in relation to your clients. I'm not
2 trying to get into the details of it. But, you know, I do
3 think it is important to have something in place to -- you
4 know, to ensure that spoliation -- or at least take
5 reasonable steps to ensure that spoliation isn't going to
6 happen. Do you-all have any suggestions about ESI
7 protocol or a preservation order or is that something that
8 you want to take up with Ms. Kaplan after the hearing?

9 MR. KOLENICH: Judge, this is Jim Kolenich.
10 Yeah, I think we would like to discuss that with
11 Ms. Kaplan's office.

12 We did provide them a declaration from
13 Mr. Parrott affirming that he hasn't destroyed anything
14 that could be responsive to their discovery requests,
15 despite his social media posts. So we would just like to
16 echo what Mr. Spencer and Mr. Peinovich are saying, that
17 we haven't destroyed anything. We understand their
18 concern, but the information is safe and secure.

19 But, yeah, we understand that there will be an
20 ESI protocol that we should agree to. And we will do
21 that. We will negotiate that with Ms. Kaplan's office.

22 THE COURT: All right.

23 MS. KAPLAN: Your Honor, if I may. I mean, the
24 problem that we're having on this -- and, again, I know
25 Your Honor doesn't want a full argument, and so we can

1 respond later, but the problem we have on day one they say
2 something publicly, encouraging people or saying that they
3 destroyed materials, and then on day three they say they
4 haven't. That doesn't leave us in a very comfortable
5 position, as Your Honor can imagine. That's why we think
6 some kind of third-party examination may well be necessary
7 here.

8 MR. PEINOVICH: I would like to say something
9 here. Michael Peinovich.

10 THE COURT: Hold on, Mr. Peinovich.

11 And, you know, Ms. Kaplan, maybe at some point
12 that examination will be necessary. But I think the first
13 -- the first step is to get the ESI protocol, get a
14 document preservation order. And I would like you-all
15 (inaudible) and do that in pretty short order, really in
16 the next week, I would think, or two, if that is
17 manageable.

18 MS. KAPLAN: We will absolutely do that, Your
19 Honor. Thank you.

20 THE COURT: All right. And, Mr. Campbell and
21 Mr. Jones, are you agreeable to that?

22 MR. CAMPBELL: Your Honor, Dave Campbell. Are we
23 agreeable to negotiating an ESI agreement?

24 THE COURT: Yes, sir.

25 MR. CAMPBELL: Yes, sir. Of course. Yes, Your

1 Honor.

2 MR. JONES: Yes, Your Honor. Bryan Jones here.

3 THE COURT: All right.

4 And, Mr. Spencer and Mr. Peinovich, it sounds
5 like you-all are in spirit and in favor of that as well?

6 MR. PEINOVICH: Yes, Your Honor, I'm more than
7 happy to negotiate something like that with plaintiffs. I
8 would just like to say that I have not ever said that I
9 deleted anything. I -- in fact, just the opposite. The
10 -- any social media posts of mine actually reaffirms my
11 statements that I have not deleted anything. And I have
12 taken steps to preserve information. So what --
13 Ms. Kaplan's previous statement about something said on
14 day one and then something else said on day two does not,
15 in my opinion, apply to me.

16 THE COURT: All right.

17 Mr. Spencer, are you agreeable with engaging in
18 negotiating the ESI protocol?

19 (Pause.)

20 THE COURT: Mr. Spencer, are you still there?

21 (No response.)

22 THE COURT: We may have dropped somebody.

23 MR. SPENCER: I'm here. I'm sorry. I muted the
24 phone.

25 Yes. I am, of course -- I am, of course, willing

1 to negotiate. That is perfectly fine.

2 I would also just like to mention, Roberta
3 Kaplan, when she said on day one they claim they are
4 deleting and on day three they claim that they were
5 preserving the information, that is in direct reference to
6 another party. It is in direct reference to Matt Parrott
7 and the Traditionalist Workers Party. I have never said
8 anything approaching that.

9 THE COURT: All right. Ms. Kaplan -- I don't
10 know that she was directing that at you. But we can move
11 -- I think we can move beyond that.

12 All right. Ms. Kaplan, are there other things to
13 discuss as far as discovery or the case schedule at this
14 point?

15 MS. KAPLAN: I think the only issue that I'm
16 aware of, Your Honor -- and one of my colleagues may kick
17 me and tell me I'm missing something, but the only thing
18 that I'm aware of is the motion that we had in connection
19 with doing the meet-and-confer process with Mr. Peinovich,
20 precluding him from recording our conversations.

21 THE COURT: Right. And that is something that I
22 -- that I will -- or I do want to address today, so we can
23 go ahead and take that up.

24 It seems that most of the things that you would
25 want to discuss in the Rule 26(f) conference we have

1 probably covered today; is that correct?

2 MS. KAPLAN: I think so, Your Honor.

3 THE COURT: All right. And, Mr. Peinovich, what
4 is -- do you still have concerns about wanting to
5 -- wanting to record your conversations with plaintiffs'
6 counsel?

7 MR. PEINOVICH: I am happy to do -- if they are
8 uncomfortable talking with me on the phone -- I believe
9 that if we do speak on the phone, I just have a basic
10 right to preserve conversations with them for use in the
11 case and future, you know, recordkeeping and reference.
12 If I agree to something on the phone, I would like to have
13 sort of an exact recording of what is said. If they are
14 not comfortable with that, I am happy to conduct
15 negotiations over email.

16 THE COURT: Well, you may -- it is probably good
17 practice for anyone, if there is an actual agreement, to
18 have it in email or a letter or document more
19 memorializing that agreement.

20 But, Mr. Peinovich, there is, in every civil
21 case -- and the Rules of Civil Procedure really require
22 this -- that the parties and attorneys have to work
23 together and have to be able to cooperate at least to a
24 certain degree, to make the case proceed and to do so in a
25 just way. And I -- you know, I don't think that recording

1 those conversations, one, is necessary. In my experience,
2 I have never seen that there's, you know, some real
3 fallout from not having a recording of a conversation
4 between counsel or counsel and an unrepresented party.
5 But I do think it would be inconsistent with the rules,
6 because it engenders -- or really encourages people not to
7 be as cooperative, if they are recording.

8 So what I would do is ask you not to record your
9 conversations with plaintiffs' counsel. And if you feel
10 like you need to have a record of the discussion, then an
11 email is certainly sufficient.

12 MR. PEINOVICH: Yeah. I completely understand
13 that decision. And I'm happy to comply with that, Your
14 Honor.

15 I -- again, I'm a pro se defendant. I'm kind of
16 up against a lot of stuff here. And when I was initially
17 saying this, I was less seasoned, shall we say, in doing
18 these matters. But through dealing with this case and,
19 you know, learning about the system and stuff, I have
20 become more familiar and more comfortable with it. So I
21 am happy to either not record, if we talk voice, and, in
22 the alternative, simply conduct negotiations via email.

23 THE COURT: Okay. All right. Thank you,
24 Mr. Peinovich. And I think that addresses that motion.

25 All right. Mr. --

1 MS. KAPLAN: Your Honor?

2 THE COURT: Go ahead.

3 MS. KAPLAN: One other issue that we had is, you
4 know, we are very eager to get this case underway. You
5 have heard me talk about trying to get documents produced.
6 As soon as we start getting documents in, we are very
7 eager to start taking depositions. Obviously, we won't
8 take the depositions of the two defendants right now with
9 criminal issues, but as to the other defendants.

10 And one thing we would like to ask is we would
11 like to do the depositions in the courthouse, if that's
12 okay with Your Honor.

13 THE COURT: You know, I suppose that would really
14 depend on the convenience of all of the parties and if it
15 is -- if that's the most suitable place for somebody to
16 -- you know, to travel for a deposition. It is certainly
17 something that we can consider.

18 MS. KAPLAN: So the parties that may not want to
19 travel, we are certainly amenable to doing those
20 depositions in the closest federal courthouse to wherever
21 they are located.

22 THE COURT: All right.

23 MR. WOODARD: This is Elmer Woodard.

24 That might not be a bad idea. We have -- we have
25 -- speaking for our guys, we have security concerns which

1 are much, much lessened if we're in the federal
2 courthouse. So that might not be a bad idea, Judge.

3 THE COURT: All right. Mr. Campbell, you are
4 -- Mr. Fields is in -- well, he's in custody at this point
5 and the deposition certainly would be some ways off. But
6 is that something -- something -- I imagine the deposition
7 for Mr. Fields would be at the local jail, one way or the
8 other one, whenever that is going to take place.

9 MR. CAMPBELL: That was my thought, although Your
10 Honor may be able to cause a change to that. But that was
11 -- that was kind of my thought. But, again, Judge, I am
12 certainly hoping you rule in our favor on the motion to
13 stay, at least in regard to Mr. Fields, so I don't want to
14 say something to the contrary.

15 THE COURT: Right. No, I understand.

16 And, Mr. Jones, what are your thoughts on where
17 to hold the depositions?

18 (Pause.)

19 THE COURT: Mr. Jones, would you concur in this
20 request to have the depositions at the courthouse in
21 Charlottesville or a courthouse in another jurisdiction?

22 MR. JONES: Sorry, Your Honor. Yes, I would
23 concur in that.

24 THE COURT: All right.

25 MR. CAMPBELL: And, Your Honor, if I could

1 briefly -- Dave Campbell, again -- that doesn't sound like
2 a bad idea to me insofar as the Court's ruling and other
3 individuals.

4 THE COURT: Okay. Let's see, and Mr. Spencer?

5 MR. SPENCER: I -- I have no objection.

6 THE COURT: All right. Mr. Peinovich?

7 MR. PEINOVICH: Yeah. I would -- I agree to the
8 item about the federal courthouse closest to where I'm
9 located. I would -- I have a serious security concern
10 about traveling to Charlottesville. I have been -- as
11 well as other defendants, have been subject to physical
12 attack outside of the Charlottesville courthouse. In
13 particular, Defendant Kessler has been attacked several
14 times in going to and from court appearances. And I don't
15 want to be subjected to that. So I would prefer to be
16 deposed, if I'm going to be deposed, in a courthouse near
17 where I live, a federal courthouse, of course. So I'm
18 agreeable to that.

19 MS. KAPLAN: We understand that, Your Honor. And
20 I think Mr. Peinovich is quite close to most of us in New
21 York, so that shouldn't be a problem.

22 THE COURT: All right. Well, what I -- what I
23 would ask you-all to do on that is when you get -- get
24 around to scheduling depositions, you know, of course you
25 are going to -- if it is out of this district, you would

1 need to check with those courts and make sure that they
2 can or are willing to accommodate the request to hold the
3 deposition there. And once you know about a time to hold
4 a deposition, then contact the clerk's office at this
5 -- in this district and we'll see if we can arrange to
6 have a deposition at the courthouse as well.

7 You know, I think that there are some
8 -- certainly some things that are in favor of it, you
9 know. I do have some -- there are some security concerns
10 about having -- there are some security concerns as well.
11 And certainly we can try and address those here at the
12 courthouse.

13 MR. WOODARD: Your Honor, this is Elmer Woodard.
14 Some security concerns doesn't really -- it kind
15 of understates it, Your Honor. The truth is that the last
16 thing that I want to do for any of my clients is have any
17 kind of dissemination of where they are going to be and
18 when they are going to be there, because I have already
19 had -- one of my clients already has had a hit squad come
20 after him because that information got out. And whether
21 it is at the Charlottesville courthouse or at the -- you
22 know, some courthouse in Utah, I don't know. But we have
23 serious, serious security concerns, because, remember, we
24 can't carry firearms between the sidewalk and the door.
25 And we certainly can't carry them through the door. And

1 the only thing that kept one of my -- one of our clients
2 from either getting killed or having the heck beat out of
3 him was he was carrying a firearm. And he showed it to
4 the people who were coming after him and they backed off.

5 THE COURT: Mr. Woodard, we don't need to get
6 into all of that. But, you know, hearing this, it does
7 make me wonder if it makes sense for you-all to just agree
8 to another location that isn't going to draw the attention
9 that coming to the federal courthouse in Charlottesville
10 would certainly engender. And I'll just -- we can
11 (inaudible) throw that out --

12 MS. KAPLAN: Your Honor, I think maybe another
13 solution that is -- we have been told that the courthouse
14 would be the safest, but maybe a solution is for all of
15 the parties to agree that deposition notice, schedule
16 dates for deposition, persons, and times be kept strictly
17 confidential.

18 MR. WOODARD: That's what I was going to suggest,
19 Ms. Kaplan. I think that's -- that was where my concern
20 is. The federal courthouse is a pretty safe place. We
21 don't have a problem with that. But there is a security
22 concern getting to the door. And I would -- that's what I
23 was going to ask for is that the time and location of any
24 depositions has to be kept confidential, because I
25 -- because, honestly, Judge, we don't want to create a

1 situation where we have got to be inside the federal
2 courthouse at ten o'clock and there's a mob outside, and
3 we can't get there because of the screaming mob. So we're
4 either -- you know, we either -- we either get beat up or
5 held in contempt by a federal judge. Neither one is
6 particularly palatable.

7 THE COURT: Well, the depositions, of course, are
8 a non-public proceeding, so that's something that you-all
9 can keep your schedule amongst yourselves. And let the
10 clerk's office know when you -- you know, when you want to
11 have those. And then we'll see if -- we'll see if the
12 schedules can be accommodated. But that may be -- that
13 may be the best way to handle it.

14 MR. WOODARD: Okay.

15 THE COURT: All right.

16 Counsel, let me tell you about how I do like to
17 address discovery disputes. And I do try to address them
18 informally and do so quickly. It does require that
19 you-all -- the rules require that you-all confer in good
20 faith to try and resolve any disputes before you bring
21 them to my attention, though. And oftentimes that means
22 that after objections are filed to -- or submitted, if
23 there are any discovery requests, that you-all at least
24 pick up the phone, if not meet in person. And there may
25 be additional written discussions about the dispute. But

1 it really does require that you-all try and work it out
2 and narrow the dispute before you bring it to me.

3 Now, if you can't resolve it on your own, what I
4 would ask you to do is to contact Karen Dodson, who is my
5 scheduling clerk in Harrisonburg. You can set up a
6 conference call with me. You can send Karen, you know, a
7 short email, really just a paragraph or two letting me
8 know what the dispute is about. If it is something that
9 is a little bit more involved, then you can submit a joint
10 letter to Karen, really of no more than two pages, just
11 giving me the gist of the dispute. If there are any
12 requests for production of documents or interrogatories
13 that are at issue, attach those and the objections to the
14 letter so that I can see the language of the request and
15 the objection. We'll have a conference call and then see
16 if we can resolve it that way.

17 Sometimes I will rule on the conference call and
18 an order will come out of it. And other times we can just
19 reach an agreement by discussing it on the conference
20 call. If it is something that turns out to be more
21 involved that requires, you know, briefing, then we can
22 talk about a briefing schedule on that call.

23 Now, Ms. Kaplan, do you have any questions about
24 that?

25 MS. KAPLAN: Not at all, Your Honor. Thank you.

1 THE COURT: All right. And, Mr. Spencer, do you
2 have any questions about that procedure?

3 MR. SPENCER: No.

4 THE COURT: All right. And Mr. Campbell?

5 MR. CAMPBELL: No, sir.

6 THE COURT: All right. Mr. Woodard or
7 Mr. Kolenich?

8 MR. WOODARD: We're okay with it.

9 MR. KOLENICH: No, sir.

10 THE COURT: All right. And Mr. Jones?

11 (No response.)

12 THE COURT: Mr. Jones, are you there?

13 (No response.)

14 THE COURT: All right. And Mr. Peinovich?

15 MR. PEINOVICH: Yes, Your Honor. I'm
16 (inaudible).

17 THE COURT: Okay.

18 All right.

19 There are a number of motions that are pending.
20 There are a couple of motions to quash subpoenas. I don't
21 want to address those today. There's Mr. Peinovich
22 (inaudible) filed motion for sanctions. And Ms. Kaplan
23 has responded to that. And I don't intend to address that
24 today either. But I will address those in written orders.
25 And if I think that I need to have a hearing on any of

1 those, I'll contact the parties.

2 Now, on the motion to stay discovery -- they are
3 the two -- I just want to ask if anybody has anything else
4 that they want to say on those motions.

5 Mr. Peinovich, I think I -- I think you already
6 indicated that you had said everything that you needed to
7 on your motion?

8 MR. PEINOVICH: Uh-huh. Yes. Yes. That's
9 correct, Your Honor.

10 THE COURT: All right. And Ms. Kaplan -- well,
11 let me ask this: Mr. Campbell, as to Mr. Fields' motion,
12 is there anything else that you wanted to say on that?

13 MR. CAMPBELL: Judge, I would just -- you know,
14 if it were a typical hearing, I would expect to go and
15 then have the plaintiff go and then respond, as it being
16 my motion. I would just ask that the Court -- in addition
17 to what is filed in the motion, in addition to the
18 concerns I raised earlier as to severing and/or to issues
19 with potential negative coverage ramifications for
20 Mr. Fields, I would just ask the Court to permit me to
21 respond if there's anything I feel the need to when
22 Ms. Kaplan has an opportunity.

23 THE COURT: All right.

24 MR. WOODARD: This is Elmer Woodard. Can I add
25 something, Judge?

1 THE COURT: Yes, for Mr. Cantwell, go ahead.

2 MR. WOODARD: Well, for Mr. Cantwell and the rest
3 of our clients. I have got -- I have got evidence that
4 -- from a -- well, I have got credible evidence, let's put
5 it that way, that -- we -- we joined in on the motion to
6 stay by Mr. Peinovich because we have got credible
7 evidence that the purpose of this is -- the purpose of
8 this whole case is to, quote, bankrupt the defendants and
9 discover their operations, unquote.

10 And so we would also ask -- we would join into
11 the motion to stay because the complaint says the purpose
12 of this is to get a bunch of money for the injured
13 plaintiffs. And so to the extent that the discovery seeks
14 to discover operations that aren't relevant to what the
15 complaint seeks, we would join into Mr. Peinovich's motion
16 to stay and --

17 THE COURT: Mr. Woodard, let me cut in on that
18 because that isn't a proper reason to stay discovery.
19 That may be an objection in responding to discovery, but
20 saying that the request isn't relevant is not a grounds to
21 stay.

22 MR. WOODARD: Yes, sir.

23 THE COURT: All right.

24 Ms. Kaplan, is there anything that you would want
25 to say on either of the motions to stay discovery?

1 MS. KAPLAN: I don't think we need to add
2 anything right now, Your Honor. Thank you.

3 THE COURT: Okay. All right, Mr. Campbell,
4 then -- I know you wanted to respond to Ms. Kaplan's
5 arguments, so is there anything else that you want to say?

6 MR. CAMPBELL: No, not at all, sir.

7 THE COURT: All right. Like I said, I will do a
8 written -- I'm going to take up those motions and address
9 them in a written order.

10 All right. I think that is essentially
11 everything that I wanted to cover today.

12 Ms. Kaplan, is there anything else that you think
13 we need to (inaudible).

14 MS. KAPLAN: Nothing off the top -- nothing else
15 for today, Your Honor. Thank you.

16 THE COURT: All right. And I know that you
17 mentioned earlier that you -- in the order addressing the
18 motions to stay discovery you would want some sort of a
19 deadline put in place should I deny those motions for the
20 defendants to respond to your discovery, which at this
21 point I understand that their responses are overdue under
22 the time limits in the rules.

23 MS. KAPLAN: Yes, Your Honor -- I'm sorry. Could
24 you -- I apologize, Your Honor. I got distracted. What
25 was the last thing you said?

1 THE COURT: That you had asked for a -- for me to
2 impose a deadline for the defendants to respond to your
3 written discovery because you have indicated that it is
4 -- those responses are overdue at this point.

5 MS. KAPLAN: Yes, Your Honor. And what we would
6 -- what we would propose is something less than the 30
7 days, as they are already overdo, for the written
8 responses and objections. And, obviously, then they can
9 have a rolling production of the actual documents. But we
10 would at least like to get their written responses in
11 pretty promptly.

12 THE COURT: All right.

13 MR. CAMPBELL: Your Honor, if I could briefly.
14 This is David Campbell again.

15 We did -- I just wanted to point out we did
16 timely file objections, although not responses, and would
17 again -- if the Court is inclined to deny the motion to
18 stay, I would request that the Court in some way
19 incorporate a reference that it sounded like plaintiffs'
20 counsel stated today that they agreed to hold off -- to
21 some -- I mean, they didn't say, "We'll wait until after
22 the trial," but they did represent to the Court that they
23 would agree to hold off on the deposition of anyone facing
24 criminal charges to some extent.

25 THE COURT: And, Mr. Campbell, I'll say this.

1 You know, I'm certainly leaning towards denying the stay,
2 but I am receptive, you know, to certain instances or
3 certain, you know, types of discovery that may be
4 particularly problematic for Mr. Fields -- or,
5 Mr. Woodard, for Mr. Cantwell -- to respond to today. So
6 if there are -- I think if there are certain categories or
7 -- or, like, a deposition that presents a problem, if
8 that's not something that you are able to work out with
9 plaintiffs' counsel, then, you know, you can bring that
10 back to -- back in front of me.

11 All right.

12 MR. CAMPBELL: Thank you, Your Honor.

13 MR. WOODARD: Yes, sir.

14 THE COURT: All right.

15 Mr. Woodard or Mr. Kolenich, is there anything
16 else that you think we need to address today?

17 MR. KOLENICH: No, sir.

18 MR. WOODARD: I have just got a question, maybe a
19 dumb one. So at the end of the -- at the end of the day,
20 the motions to dismiss are scheduled for, what, May 24th
21 or something like that?

22 THE COURT: That's right.

23 MR. WOODARD: That's my understanding. I'm not
24 sure if that's correct. Okay.

25 And so -- here is the only thing I would like to

1 say, is that the scope of discovery is absolutely huge.
2 And I think it is burdensome on all of the defendants to
3 have to start ponying all of that stuff up, only to have
4 -- you know, only to be let out of the case on a motion to
5 dismiss. That's -- that's my only -- but it sounds like,
6 to me, that the motions -- if the motions to stay are
7 granted, then that's precisely what is going to happen.
8 Am I wrong on that?

9 THE COURT: Well, the -- I mean, Mr. Peinovich's
10 motion is essentially that, that, you know, there's a
11 pending motion to dismiss and so discovery shouldn't
12 proceed. But if I deny those motions, then discovery is
13 proceeding. And, if not, it is not on (inaudible) there's
14 a motion to stay. But I will try and address those
15 motions to stay shortly.

16 MR. WOODARD: Okay. I just wanted to make sure I
17 was clear.

18 THE COURT: All right.

19 Mr. Kolenich, is there anything else that you
20 wanted to -- that you think we needed to cover today?

21 MR. KOLENICH: No, sir, Your Honor. The -- you
22 guys just mentioned a May hearing on that motion to
23 dismiss. Is that accurate or is that -- I had it as June
24 12th.

25 THE COURT: No, I have May.

1 UNIDENTIFIED VOICE: (Inaudible.)

2 THE COURT: Yeah, the docket in this case says
3 May 24th, at I think 10:00 a.m., in front of Judge Moon,
4 for the motions to dismiss.

5 MR. KOLENICH: Thank you, Your Honor.

6 THE COURT: All right. Mr. Campbell, is there
7 anything else that you think we need to address today?

8 MR. CAMPBELL: No, sir.

9 THE COURT: All right. Mr. Jones?

10 MR. JONES: No, sir.

11 THE COURT: And Mr. Spencer?

12 MR. SPENCER: No, sir.

13 THE COURT: And Mr. Peinovich?

14 MR. PEINOVICH: No, Your Honor.

15 THE COURT: All right. Well, I will hold off on
16 entering a scheduling order until we do get a trial date
17 scheduled. And that will be closer to the time of the
18 hearing on the motion to dismiss. And -- but we will be
19 in touch with you-all to schedule a status conference,
20 perhaps for after that hearing, to just check in on how
21 the case is proceeding.

22 All right. I want to thank everyone for calling
23 in and for participating productively today in this
24 hearing.

25 Thank you very much. And have a good day.

1 UNIDENTIFIED VOICE: Thank you, Your Honor.

2 MR. WOODARD: Thank you, Judge. Have a good
3 weekend.

4 MS. KAPLAN: Thank you, Your Honor.

5 (Thereupon, these proceedings were adjourned at
6 3:10 p.m.)
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10 I certify that the foregoing is a correct
11 transcript from the record of proceedings in the above-
12 entitled matter.

13 /s/ Carol Jacobs White March 20, 2018
14 Court Reporter Date
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